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In re Application of	:	
JOHN BROWNIE et al.	:	DECISION ON PETITION TO
U.S. Serial No.: 10/522,513	:	
PCT Application No.: PCT/GB03/02832	:	WITHDRAW HOLDING OF
Int. Filing Date: 01 July 2003	:	
Priority Date: 27 July 2002	:	ABANDONMENT
Attorney Docket No.: 10069.0006US1	:	
For: CANINE RESPIRATORY	:	
CORONAVIRUS (CRCV)....	:	

This is in response to applicants' "Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181", filed in the United States Patent and Trademark Office (USPTO) on 02 June 2006 in the above referenced application.

On 26 September 2005, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration was not in compliance with 37 CFR 1.497(a) and (b). On 21 November 2005, applicants filed an executed declaration.

On 7 February 2006, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed to applicant indicating that the declaration did not identify the citizenship of each inventor and thus, was not in compliance with 37 CFR 1.497(a) and (b).

On 23 May 2006, applicant made a status inquiry regarding this application using PAIR and discovered that the Notification of Defective Response had been issued on February 7, 2006.

According to Petitioner, upon contacting the PCT Help Desk to inquire about the status of the application, applicant was advised that the application was abandoned for failure to respond to the 07 February 2006 Notification of Defective Response. On 02 June 2006, applicant filed the instant Petition to Withdraw the Holding of Abandonment along with docket record for the instant application.

On 22 June 2006, applicant filed a response to Notification of Defective Response along with a newly executed declaration.

### DISCUSSION

Counsel indicates that he did not receive the 07 February 2006 Notification of Defective Response until it was received via facsimile on May 26, 2006 from the PCT Help Desk. Applicant petitions to withdraw the holding of abandonment for failure to timely respond to the Notification of Defective Response, which he alleges was never received.

In order to establish that papers were not received, as set forth in the Official Gazette at 1156 OG 53, applicant must provide the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file

jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement). No petition fee is required. See MPEP §711.03(c), p.700-168.

Counsel states that the 07 February 2006 Notification was not received and that "a search of the file jacket and the docket record for the subject application indicates that said Notification was never received by the Attorneys of Record, Jaeckle, Fleischmann & Mugel, LLP [(JFM)] ." Counsel states that the standard practice at JFM is that every piece of mail is stamped by the receptionist with the due date received and then goes directly to the docket clerk to be docketed.

Counsel has not satisfied Item (1) because he has not stated that the Office action was not received by the practitioner. Item (2) above is not satisfied because counsel states that a search of the file jacket and docket record for the subject application was conducted. What is required is a search of the file jacket and a search of the firm's docket records.

With regard to item (3), applicant submitted the docket record only for the instant application to show the non-receipt of the 07 February 2006 Notification. Counsel has not provided a copy of the docket record where the non-received Office action would have been entered had it been received. The docket record required is the docket report showing all replies docketed for the date one month from the mail date of the non-received Notification (07 March 2006 in this case) indicating that there was no record of a response for the present application being due on that date. This docket record should be attached to and referenced in practitioner's statement.

With regard to the declaration filed on 22 June 2006, the declaration is in compliance with 37 CFR 1.497(a) & (b) and is acceptable.

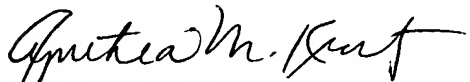
### **CONCLUSION**

For the reasons discussed above, the petition under 37 CFR 1.181 is **DISMISSED WITHOUT PREJUDICE**. The application remains **ABANDONED**.

Applicant should submit a true copy of the docket record where the non-received Office action would have been entered had it been received (that is, the docket record for 07 March 2006) and should be referenced in the practitioner's statement.

Any request for reconsideration on the merits of this decision must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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